

Ram Swarup Verma

Vs

Onkar Nath and Others

Civil Appeal No. 376 of 1970

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

16.12.1970

JUDGMENT

HEDGE, J. -

1. This is an election appeal under Section 116-A of the Respondent of the People Act, 1951. It relates to the mid-term election in 1969 to the U.P. Legislative Assembly from Rajpur constituency in the District of Kanpur. The poll took place on February 5, 1969. Five candidates contested the election. The appellant stood as an independent. Ram Dulare Misra, respondent No. 2 in this appeal, was the Congress nominee. The contest was mainly between the appellant and respondent No. 2. The appellant was declared elected having secured 36,997 votes as against 22,198 votes secured by Misra. The election of the appellant was challenged by respondent Onkar Nath, a voter in the constituency on various grounds. The High Court set aside the election of the appellant on the ground that he was guilty of corrupt practices under Section 123(3) of the Representation of the People Act, 1951. The High Court held that the appellant was guilty of appealing to the voters to vote for him on the grounds of his caste and refrain from voting to Misra on the ground that he was a Brahmin. The other grounds alleged against the election of the appellant were negated by the High Court. Hence in this appeal we are only concerned with the correctness of the findings of the High Court that the appellant was guilty of corrupt practices under Section 123(3).

2. The appellant was elected to the U.P. Legislative Assembly in the General Election in 1967 on the S.S.P. ticket. He was the Finance Minister in the U.P. Government when the S.V.D. was in power. The allegation of Onkar Nath is that after the fall of the S.V.D. Government the appellant formed an association called "Arjak Sangha". It was a communal organisation. The membership of that association was confined to those who are born in the so-called lower castes like Kurmi, Yadava, Kori, Chamar, Mallah, Gadaria and Harjians. The activities of that Sangha were primarily directed for the consolidation of these castes as against the upper classes in general and Brahmins in particular. It was said that this Sangha under the guidance of the appellant carried on virulent propaganda against the Brahmins before the election, during the election as well as thereafter. According to the allegations contained in the election petition, respondent No. 2 was the brain behind this Sangha and its principal spokesman. It is also alleged that during the election the appellant as well as B. P. Maurya spoke at several election meetings hurling abuse against the Brahmin community, highlighting the exploration by the community in the past and requesting the voters not to vote to Misra who was a Brahmin but to cast their votes to the appellant who is a Kurmi. In support of this plea several witnesses have been examined on behalf of the first respondent. Evidence was also led to show that the principal objective of Arjak Sangha was to denounce the Brahmins and Brahminism. The constitution of the Arjak Sangha was placed before the Court to demonstrate the anti-Brahmin objective of Arjak Sangha. Several pamphlets published

by Arjak Sangha after the election wherein Brahmins and Braminism had been assailed were placed before the court. It was said that one of the slogans raised during the election was "Brahmin Bania Lalla Inka Munh Ker do Kala". Evidence was also led to show that security proceedings had been initiated against some of the supporters of the Arjak Sangha at about the time of the election for preaching hatred against Brahmins and this creating tension in certain localities. Apart from this general evidence adduced to show the anti-Brahmin activities of the appellant and his supporters before the election, at the time of the election and after the election, evidence was also led to show that appeals were made at certain meetings not to cast votes to Misra as he was a Brahmin and that votes should be cast in favour of the appellant on the ground that he belongs to a lower caste.

3. The High Court has accepted the evidence referred to hereinbefore. The appellant in his evidence did not hesitate to admit that he is against Brahminism and he wants to finish Brahminism. His antipathy towards Brahminism is writ large in his evidence. The High Court has relied on this circumstance as well as the evidence relating to the activities of Arjak Sangha before and after the election for probalising the evidence adduced in support of the election petition that the appellant and his supporters particularly B. P. Maurya has appealed to the voters to vote for the appellant on the ground of his caste and not to vote for Misra as he is a Brahmin. The appellant had denied that he had at any time appealed or permitted others to appeal to the voters during the election to vote for him on the ground of this casts and not to vote for Misra as he is a Brahmin. He also examined certain witnesses on his side to support that plea of his but that evidence has not been believed by the Trial Court. The High Court has also relied on the initiation of security proceedings as a circumstance probalising the evidence that during his election meetings the appellant had committed the corrupt practice coming within Section 123(4).

4. It was urged by Mr. A. S. R. Chari, learned Counsel for the appellant, that the evidence relating to the past activities of the appellant or of the Arjak Sangha as well as the utterances of the appellant after the declaration of the result of the election were wholly irrelevant. According to him the evidence relating to the initiation of a security proceeding is neither relevant nor admissible. Counsel for the appellant contended that the admission of irrelevant evidence has caused considerable prejudice to his client's case as it must have weighed with the court. We have not thought it necessary to go into the question whether Mr. Chari is right in his contention that the evidence objected to by him is admissible or not as in our opinion there is reliable evidence to show that in some of the election meetings, the appellant and his supporter B. P. Maurya did appeal to the electorate, to cast their votes in favour of the appellant on the ground of his caste and not to vote for Misra because he was a Brahmin. There is convincing evidence on this point at least in respect of three meetings held at Sandalpur, Baraur and Rajpur respectively on February 2, 1969. So far as Sandalpur meeting is concerned, there is evidence of P.W. 23, Nathu, and P.W. 24, Radhey Shyam. Both of them appear to be disinterested witnesses. Their evidence has been accepted by the Trial Court. We have ourselves gone through their evidence and we are of opinion that their evidence is creditworthy. To rebut the evidence of those witnesses, the appellant has examined P.W. 13 Radhey Shyam; R.W. 18 Pyare Lal; R.W. 19 Ram Avtar. Radhey Shyam was the polling agent of the appellant. Ram Avtar and Pyare Lal's evidence did not impress the Trial Court. We have also not been impressed by their evidence. They appear to be partisans of the appellant.

5. So far as the meeting at Baraur is concerned, on behalf of the election petitioner, P.W. 19, ram Narain son of Lachman and P.W. 33 another Ram Narain son of Kunja have been examined. They support the case put forward in the election petition. They speak to the fact that both the petitioner and maurya appealed to the voters on the basis of castes. P.W. 19 is a Dhore by caste. He has read up to B.Sc. He is not shown to be interested either in Misra or the election petitioner nor is it shown

that he had any enmity with the appellant. His evidence was corroborated by P.W. 33. He also appears to be disinterested witness. To counter the evidence of P.Ws. 19 and 33, the appellant examined R.W. 5, Hublal, R.W. 6, Babu Lal, R.W. 15 Chandra Shekher. The Trial Court has given reason for not relying on their testimony. These witnesses contradict each other on various material particulars. It is clear from their evidence that they were not present at the meeting.

6. Now coming to the meeting at Rajpur on the side of the election petitioner we have the evidence of P.W. 12 Gur Narain; P. W. 12 Jagat Narain and P.W. 13 Moti Lal. All these witnesses consistently speak to the fact that both the appellant as well as Maurya appealed to the voters to vote for the appellant on the basis of his caste and not to vote for Misra as he was a brahmin. It was said that both of them told their audience that Brahmins had been ruling over the lower castes for hundreds of years and that by reciting Mahabharata and Ramayana they had been earning a lot without putting any labour and that the lower castes should not allow the brahmins to have a predominating position. The witnesses examined on behalf of the petitioner appear to be disinterested witnesses. It is not established that they had any reason to speak against the appellant. As against their evidence the appellant had examined R.W. 4 Kalika Prasad; R.W. 16 babu Ram and R.W. 17 Ram Shanker Ojha. Both Babu Ram and Ram Shanker admitted in their cross-examination that they worked for the appellant during the election. The evidence of kalika Prasad did not impress the Trial Court.

7. One important circumstance to be noted in this case is that according to the evidence of all the witnesses Maurya was the chief spokesman on behalf of the appellant. But strangely enough Maurya was not examined in the case. No explanation has been offered for his non-examination. It is true that both Misra and Onkar Nath have not been examined. Neither Misra nor Onkar nath claims to have any personal knowledge of the corrupt practices committed by the appellant. Therefore their non-examination has no significance.

8. On an over-all assessment of the evidence adduced in the case, we agree with the High Court that the appellant was guilty of the corrupt practice alleged against him and therefore his election was rightly set aside.

9. In the result this appeal fails and the same is dismissed with costs.

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